

REMARKS

The Office Action dated September 29, 2005, has been received and carefully considered. In this response, claims 1-6, 8, and 10-14 have been amended. Entry of the amendments to claims 1-6, 8, and 10-14 is respectfully requested. Reconsideration of the outstanding rejections in the present application is also respectfully requested based on the following remarks.

I. THE OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION

On page 2 of the Office Action, claims 1-14 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,899,714.

This rejection is hereby respectfully traversed with the submission of the attached terminal disclaimer.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness-type double patenting rejection of claims 1-14 be withdrawn.

II. THE ANTICIPATION REJECTIONS OF CLAIMS 1-10

On pages 3-4 of the Office Action, claims 1-10 were rejected under 35 U.S.C. § 102(b) as being anticipated by either

Cotrel (U.S. Patent No. 5,005,562) or Steffee (U.S. Patent No. 4,611,581). These rejections are hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id. "In addition, the prior art reference must be enabling." Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). "Such possession is effected if one of ordinary skill in the art could have combined the publication's description of the invention with his own knowledge to make the claimed invention." Id.

Regarding claim 1, the Examiner asserts that Cotrel and Steffee each disclose the claimed invention. However, the Examiner also encourages the Applicant to focus on the structural distinctions (e.g., engagement of vertebral screws and connecting screws) rather than on usage distinctions.

Applicant has amended claim 1 to recite that the connecting screws each have a first end configured to be substantially transversely received by engaging portions of the respective vertebral screws. It is respectfully submitted that such a limitation is not disclosed, or even suggested, by either Cotrel or Steffee. Accordingly, it is respectfully submitted that claim 1 is allowable over Cotrel and Steffee.

At this point it should be noted that Applicant has also amended claim 1 to remove language (e.g., "operable") intended to indicate usage distinctions and provide claim term consistency.

Claims 2-10 are dependent upon independent claim 1. Thus, since independent claim 1 should be allowable as discussed above, claims 2-10 should also be allowable at least by virtue of their dependency on independent claim 1. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claims 1-10 be withdrawn.

III. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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